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Attorneys for Plaintiff United States

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KETCHIKAN PULP COMPANY,

Defendant.

No.

COMPLAINT FOR REIMBURSEMENT OF RESPONSE COSTS AND DECLARATORY RELIEF UNDER CERCLA (42 U.S.C. §§ 9607 and 9613) AND FOR DAMAGES UNDER AS 46.03.822(a)

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Secretary of the United States Department of Agriculture, files this Complaint and alleges as follows:

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INTRODUCTION

- This is a civil action instituted in part pursuant to 1. Sections 107(a) and 113(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9607(a) and 9613(f), for: (1) recovery of response costs incurred and to be incurred by the United States for response actions undertaken in connection with releases and threatened releases of hazardous substances at six sites in the Tongass National Forest where Defendant Ketchikan Pulp Company ("KPC") previously conducted logging and associated operations; and (2) a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(q)(2), and 28 U.S.C. § 2201, that KPC shall be liable for any response costs incurred by the United States with respect to those sites that shall be binding in any subsequent action or actions by the United States to recover further response costs.
- 2. This civil action is also instituted pursuant to Alaska's mini-CERCLA law, namely AS 46.03.822(a), for recovery of damages incurred by the United States in connection with the cleanup of hazardous substances at an additional sixteen sites in the Tongass National Forest where KPC previously conducted logging operations and associated activities.

JURISDICTION AND VENUE

3. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 because this is a civil action commenced by the United States that arises under the laws of the United States. This Court has exclusive original jurisdiction over this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. §

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- 9613(b), because it concerns controversies arising under CERCLA. This Court has supplemental jurisdiction over the claims arising under Alaska law pursuant to 28 U.S.C. § 1367(a).
- 4. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the releases and threatened releases of hazardous substances occurred in this district and because the events or omissions giving rise to the claims herein occurred in this district.

BACKGROUND

- 5. From the early 1950's through 2000, KPC utilized logging camps, log transfer facilities, and other facilities in the Tongass National Forest to provide timber for its processing facilities near Ketchikan, Alaska. These activities occurred under the auspices of a long-term timber sale contract (the "Contract") entered into between KPC and the United States Department of Agriculture, Forest Service (the "Forest Service").
- 6. During the course of KPC's operations under the Contract, the Forest Service discovered environmental contamination at numerous facilities where KPC had operated or was operating. The Forest Service and KPC, and, in the case of the mini-CERCLA sites, the Alaska Department of Environmental Conservation, began investigating the nature and extent of contamination at these facilities and developed response actions aimed at cleaning them up to applicable regulatory standards.

The CERCLA Sites

7. Under Section 104(a) of CERCLA, 42 U.S.C. § 9604(a)(1), the President is authorized to act, consistent with the National COMPLAINT

Contingency Plan, to arrange for the removal of hazardous substances, pollutants and contaminants released into the environment or to take any other response measure he deems necessary to protect the public health or welfare or the environment. Removal actions authorized under this Section may be taken by the owner or operator of the facility or any other responsible party when the President determines that such action will be done properly and promptly.

- 8. Section 122 of CERCLA authorizes the President to exercise his discretion to enter into agreements with any person, including responsible parties, to perform any response action if he determines that such action will be done properly by that person.
 42 U.S.C. § 9622(a).
- 9. The President's authority under Sections 104(a) and 122(a) of CERCLA has been delegated to the Secretary of Agriculture ("Secretary") for non-emergency removal actions where the release is on, or the sole source of the release is from, a facility under the jurisdiction, custody or control of the Department of Agriculture. Executive Order No. 12580, Sections 2(e)(1) and 4(b)(1), 52 Fed. Reg. 2923, 2925 (Jan. 29, 1987). The Secretary's authority has been re-delegated to the Chief of the Forest Service for releases on national forest system lands, by 7 C.F.R. § 2.60, and, further, to the Regional Foresters, by the Forest Service Manual.
- 10. The Coffman Cove, East Twelve Mile, Fire Cove Metal Pit, Francis Cove, Ratz Harbor, and Thorne Bay Landfills Sites are located within the Tongass National Forest on land owned by the United States that is under the jurisdiction, custody or control of

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the Forest Service.

- 11. The Coffman Cove Site is located in the City of Coffman Cove, on the northeast coast of Prince of Wales Island, approximately fifty-five miles northwest of Ketchikan. KPC operated a log transfer facility and a logging camp there, which included maintenance and fuel storage areas.
- 12. June of 2000. during removal of petroleum In contamination from an area within the Coffman Cove Site that had been used by KPC as a maintenance shop area for logging operations in the Coffman Cove area, discarded debris from logging camp activities, including used oil filters and automotive batteries, was encountered. Evidence indicating a release or threat of a release of lead and chromium at this area, known as the Coffman Cove Former South Coast Shop Site Area, prompted the Regional Forester on August 28, 2000 to issue an action memorandum for a time-critical removal action, requiring the excavation of contaminated soil and sampling to confirm that the remaining soil met applicable cleanup levels. That action effected a partial removal of the buried debris. On March 26, 2001, the Regional Forester issued a second action memorandum directing implementation of another time-critical removal action at the Coffman Cove Former South Coast Shop Site Area aimed at completing the excavation of contaminated soil and confirmation sampling. Both removal actions were undertaken by KPC, with oversight from the Forest Service.
- 13. The East Twelve Mile Site is located at the head of Twelve Mile Arm Inlet on the east coast of Prince of Wales Island, Alaska, west of Forest Service Road 2120 and approximately twenty

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miles southeast of Craig, Alaska. It encompasses approximately thirteen acres where, from the early 1960's through the late 1970's, KPC maintained a logging camp, a log transfer facility, a base for road building operations on Prince of Wales Island, and conducted logging-associated activities, including refuse disposal.

- 14. Reconnaissance of the East Twelve Mile Site by the Forest Service in 2001, together with a preliminary assessment/site inspection in 2002, found various organic contaminants and metals, including lead and cadmium, at concentrations above CERCLA observed release criteria or CERCLA observed contaminant criteria. Dieselrange organics and residual-range organics also were detected at concentrations in excess of Alaska cleanup standards. An engineering evaluation/cost analysis ("EE/CA") that evaluated removal alternatives for the East Twelve Mile Site identified several areas where removal action was warranted owing to the presence of lead, diesel-range organics and residual-range organics present in the soil at levels in excess of applicable federal and state criteria.
- 15. Based on the EE/CA, the Regional Forester issued an action memorandum dated October 10, 2003, selecting removal actions to be taken at the East Twelve Mile Site.
- 16. The Forest Service and KPC have entered into an administrative order on consent, pursuant to which KPC, with oversight by the Forest Service, will undertake performance of the removal action selected by the Forest Service for the East Twelve Mile Site.
- 17. The Fire Cove Metal Pit Site is a disposal pit (rock quarry) covering approximately one-half acre that is located COMPLAINT -6-

adjacent to Forest Service Road 8060400 approximately one-half mile from the Fire Cove log transfer facility that KPC operated in Neets Bay on the west coast of Revillagigedo Island. KPC used the Fire Cove Metal Pit Site for disposal of waste generated by its operations at the Fire Cove log transfer facility until at least 1986.

- 18. In October of 1999, the Forest Service employed an environmental contractor to investigate the Fire Cove Metal Pit Site. During that investigation, a significant amount of the waste that had accumulated there was excavated and removed. Included within the waste removed were lead-acid batteries and soil contaminated with tetrachloroethene. Contemporaneous sampling found that the soil beneath the location of the batteries contained levels in excess of applicable regulatory standards. The Forest Service completed removal of waste from the Fire Cove Metal Pit Site in 2003.
- 19. The Francis Cove Site is located on Behm Canal, on the west coast of Revillagigedo Island, approximately thirty miles north of Ketchikan. KPC utilized the Francis Cove Site between 1969 and 1974 as a log transfer facility and logging camp. In addition to providing temporary housing for loggers, KPC's Francis Cove operations included dock-related facilities and a maintenance shop for vehicles utilized in constructing roads to areas to be logged.
- 20. Site reconnaissance in 2001 and an environmental site assessment in 2002 revealed the presence of diesel-range organics in soil at the Francis Cove Site at levels that exceeded the applicable state criteria. After Forest Service contractors had

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begun removal of the affected soils in July of 2003, additional contamination was found in a debris dump on the eastern embankment of a lagoon in the upper beach portion of the Site and in a forested area adjacent to the lagoon. This contamination included broken lead-acid batteries and solid waste. Sampling revealed the presence of lead contamination and additional diesel-range organics contamination in soils at the Francis Cove Site at levels exceeding applicable federal and state criteria.

- 21. Based on the EE/CA, the Regional Forester issued an action memorandum dated November 13, 2003, selecting removal actions to be taken at the Francis Cove Site.
- 22. The Forest Service and KPC have entered into an administrative order on consent, pursuant to which KPC, with oversight by the Forest Service, will undertake performance of the removal action selected by the Forest Service for the Francis Cove Site.
- 23. The Ratz Harbor Site is an area approximately two acres in size that is located on the east coast of Prince of Wales Island, approximately forty miles north of the City of Thorne Bay. KPC utilized land in the vicinity of Ratz Harbor from approximately 1959 through at least the 1960's, both as a logging camp and for logging-related operations.
- 24. Reconnaissance of the Ratz Harbor Site in 2000 and 2001, together with a preliminary assessment/site inspection and a supplemental investigation in 2002, revealed the existence of lead and diesel-range organics as contaminants of concern in groundwater there.
- 25. An EE/CA, performed in part by the Forest Service and COMPLAINT -8-

then completed by KPC with oversight from the Forest Service, has identified areas within the Ratz Harbor Site where a removal action was warranted owing to the levels of lead and diesel-range organics in the soil there and the potential for migration of those contaminants to groundwater.

- Based on the EE/CA, the Regional Forester issued an 26. action memorandum dated November 6, 2003, selecting removal actions to be taken at the Ratz Harbor Site.
- The Forest Service and KPC have entered into an 27. administrative order on consent, pursuant to which KPC, with oversight by the Forest Service, will undertake performance of the removal action selected by the Forest Service for the Ratz Harbor Site.
- The Thorne Bay Landfills Site encompasses some thirty-two acres containing three landfills and the surrounding drainages, approximately 1.5 miles west of the City of Thorne Bay along the south side of the Thorne River Highway on Prince of Wales Island. In connection with its logging activities under the Contract, KPC established a logging camp and built a shop, barge terminal, and sort yard at Thorne Bay on Prince of Wales Island. From the early 1970's through sometime in 1993, KPC disposed of waste from its logging and industrial activities, including hazardous substances, at the landfills.
- 29. The Environmental Protection Agency placed the Thorne Bay Landfills Site on the Federal Agency Hazardous Waste Compliance Docket on February 5, 1993. 58 Fed. Reg. 7298, 7301. The Forest Service contracted with consultants thereafter for the conduct of a 1994 Preliminary Assessment and a 1995 site inspection of the -9-

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Site.

- 30. The 1995 site inspection, which included sampling of soils, sediments and surface water at various locations at or near the Landfills, revealed the presence of volatile and semi-volatile organic compounds and various pesticides in sediments and surface water; polychlorinated biphenyls ("PCB's") in surface water and sediments in streams surrounding the Site; elevated levels (concentrations greater than three times the background levels) of certain metals, including aluminum, arsenic, barium, calcium, iron, magnesium, manganese, sodium, vanadium, potassium and zinc in surface waters surrounding the Site; and elevated levels of arsenic, barium, calcium, copper, iron, lead, sodium and zinc in Site sediments.
- 31. Analytic results indicated that the Landfills were releasing contaminants to three drainage streams adjacent to the Site, primarily by way of leachate discharged at the bases of the Landfills. The leachate flowed into the streams, two of which drained into the Thorne River estuary; the third drained into Thorne Bay. Analytic results indicated that arsenic from the Landfills had been detected in the two streams that drain into the Thorne River estuary, near the points of discharge into the estuary.
- 32. Beginning in March of 1997, KPC and its parent company Louisiana-Pacific Corporation, with Forest Service oversight, conducted a time-critical removal action at the Thorne Bay Landfills Site pursuant to an administrative order on consent. Subsequent sampling and analysis of surface water and sediments identified polychlorinated di-benzo-p-dioxin and polychlorinated

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dibenzofurans as contaminants of concern and revealed the presence in some locations within the Thorne Bay Landfills Site of manganese and iron at levels in excess of applicable Alaska water quality In 2001, the Forest Service began preparation of an EE/CA for the Thorne Bay Landfills Site to: (a) evaluate whether the objectives of the time-critical removal action had been met; (b) review available data, identify whether additional data was needed and explain any data gaps; and (c) assess the risk to human of elevated health and the environment of the presence concentrations of iron and manganese at certain locations within the Site. KPC completed the EE/CA in 2003.

33. Based on the EE/CA, the Regional Forester issued an action memorandum dated February 9, 2004, selecting additional response actions to be taken at the Thorne Bay Landfills Site.

The Mini-CERCLA Sites

- 34. The United States has incurred, and continues to incur, costs associated with the oversight or performance of investigations and response actions at an additional sixteen sites within the Tongass National Forest where KPC conducted logging-related operations pursuant to the Contract and where petroleum-related contamination was discovered.
- 35. The East Marble Island Site is the location of a former KPC logging camp located on the east side of Marble Island off the northwest coast of Prince of Wales Island, approximately forty miles northwest of Craig, Alaska. The Site covers approximately four acres and is comprised of the log transfer facility area, the former shop area, fuel storage area, trailer areas, and the borrow pits and sawmill areas to the north of those areas.

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- 36. The El Capitan Site is located at the former KPC-operated log transfer facility and logging camp located on El Capitan passage on the northwest coast of Prince of Wales Island, approximately forty-five miles north of Craig, Alaska. The Site covers approximately fourteen acres and is comprised of a former main camp area with a generator/fuel storage tanks area, utility area, maintenance shops area, and vehicle storage areas, together with a log transfer facility area located to the east, which is comprised of former fuel storage areas, log transfer device area, and equipment staging areas.
- 37. The Fire Cove LTF Site is located at the former KPC-operated log transfer facility and logging camp located in Neets Bay on the west coast of Revillagigedo Island, approximately forty miles north of Ketchikan. The Site covers approximately eleven acres and, in addition to the former LTF and logging camp, includes an A-Frame log transfer device area, an elevated saw fuel area, shop areas, an incinerator area, a generator van area, a saw gas area, and a truck spill area.
- 38. The Hassler Island Site is located at the former KPC-operated log transfer facility and camp located on Hassler Island near the northwest coast of Revillagigedo Island, approximately thirty-five miles north of Ketchikan. The Site consists of three areas totaling approximately one acre. These areas include: a log transfer facility with an A-frame and fuel storage; a rock pit/burn pile, which was used for maintenance and fuel storage; and a filled muskeg area, which included bunkhouses, a maintenance shop and fuel storage. All three areas included equipment parking.
- 39. The Klu Bay Site is located at the former KPC-operated log

transfer facility and camp located at Klu Bay, on the northwest coast of Revillagigedo Island, approximately thirty-five miles north of Ketchikan. The Site is approximately two acres and is comprised of the former log transfer facility and barge ramp area with associated fuel storage areas, a second former fuel storage area near Forest Service Road 8400-000, a third former fuel storage area located in a sand pit near Forest Service Road 8400-000, and a former oil and parts storage area approximately three miles from the log transfer facility area near Forest Service Road 8400-000.

- 40. The Labouchere Bay Site is the location of a former KPC-operated log transfer facility and camp located at the northwest tip of Prince of Wales Island, approximately ninety miles northwest of Ketchikan. The Site covers approximately twenty-eight acres and is comprised of former fuel storage tanks and pipelines, fueling areas, generator sites, maintenance shops areas, an ash disposal area, a fuel truck spill area, a log transfer facility area, and two solid waste disposal facilities formerly used by the logging camp for disposal of scrap metal and camp wastes.
- 41. The Margaret Bay Site is located at the former KPC-operated log transfer facility and camp located in Margaret Bay, which is in Traitor's Cove on the northwest coast of Revillagigedo Island. The Site is approximately thirty-five miles north of Ketchikan. It covers approximately four acres and is comprised of former fuel storage tanks and fueling areas, equipment storage and parking areas, a former sawmill area, an A-frame log transfer device area, and tidelands beach and rock knob areas.
- 42. The Polk Inlet Site is located at the former KPC-operated log transfer facility and camp located in Polk Inlet on the east COMPLAINT -13-

coast of Prince of Wales Island, approximately thirty miles southeast of Craig, Alaska. The Site covers approximately six acres and is comprised of former fuel storage tanks and fueling areas, equipment storage and parking areas, a maintenance shop area, a burn area, a heating oil tank spill area, a former drum storage area, three areas where contaminated soil was bioremediated and left in place, a small uplands camp area, an A-frame log transfer device area, and a turn-around area where a KPC employee resided during timber harvesting operations.

- 43. The Naukati Site is located approximately thirty miles north of Craig, Alaska near the unincorporated community of Naukati on the northwest coast of Prince of Wales Island. KPC utilized the Naukati Site from approximately 1974 to 1998 for log transfer operations and for housing loggers. The Naukati Site covers approximately sixteen acres and is comprised of former fuel storage tanks and fueling areas, a generator area, equipment storage and parking areas, a maintenance shop area, a burn area, a barge ramp area, home heating oil tank areas, and an A-frame log transfer device area.
- A4. In mid-2001, KPC performed a removal action at the Naukati Site, which included the removal of soil contaminated with diesel-range organics. Confirmation samples demonstrated that concentrations of diesel-range organics in excess of applicable state criteria remain in the soils there. Cleanup of the remaining soil contamination has not been completed.
- 45. The Shelter Cove Site is located at the former KPC-operated log transfer facility and camp located on the west coast of Carroll Inlet, on the southwest coast of Revillagigedo Island.

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The Site is approximately twenty miles northeast of Ketchikan, covers approximately eight acres, and is comprised of a former log transfer facility area, camp area, and maintenance shop areas.

- 46. The Shrimp Bay Site is located at the former KPC-operated log transfer facility and camp located on the northwest coast of Revillagigedo Island, approximately thirty-five miles north of Ketchikan. The Site covers approximately four acres and consists of three areas: a log transfer facility and fuel/oil storage area adjacent to Shrimp Bay; a shop and maintenance area to the south along Forest Service Road 8000-000; and a nearby rock pit.
- 47. The Southwest Neets Site is located at the former KPC-operated log transfer facility and logging camp established in SW Neets Bay, on the northwest coast of Revillagigedo Island approximately thirty miles north of Ketchikan. It was occupied by KPC and its contractors from 1991 to 2000. The Site covers approximately three acres and is comprised of former fuel storage tanks and fueling areas, a maintenance shop area, a burn area, a barge ramp area, vehicle storage areas, an A-frame log transfer facility area, and rock pits located along Forest Service Road 8060-5000 containing soil excavated from cleanup areas.
- 48. The Suemez Island/Port Refugio Site is located at the former KPC-operated log transfer facility and camp on Suemez Island off the west coast of Prince of Wales Island, approximately twenty miles southwest of Craig, Alaska. The Site covers approximately six acres and is comprised of a log transfer facility, associated fuel storage and maintenance shop areas, and a small sawmill area. The Site also includes a nearby barge landing area that was the location of a former caretaker camp, an equipment staging area, and

a hydraulic oil spill in 1997.

- The Thorne Bay Logging Camp Site is located at the former KPC-operated logging camp, sortyard, and woodwaste #4 landfill located in the vicinity of the City of Thorne Bay. The logging camp area of the Site covers approximately eighty acres and is comprised of a former logging camp, including a maintenance shop area, bulk fuel facilities area, office buildings area, generator building area, LTF areas, residential structures areas, equipment storage areas, and other facilities and areas used to support logging operations. The woodwaste landfill #4 portion of the Site covers approximately ten acres and is located approximately onehalf mile from the City of Thorne Bay on the north side of the Thorne River Highway. The sortyard portion of the Site is located at the head of Thorne Bay, approximately one-half mile from the City of Thorne Bay. The sortyard area covers approximately twentyeight acres, including thirteen acres of tidelands, comprised of log transfer facility areas, fuel/oil storage and dispensing facilities areas, tidelands areas, and areas used for upland log sorting, scaling, and storage.
- 50. The Whale Pass Site is located at the former KPC-operated log transfer facility located approximately twenty miles northwest of the City of Coffman Cove on the east coast of Prince of Wales Island. A portion of the Site is located on a shot rock fill pad bordered to the east by the waters of Whale Pass. The Site covers approximately five acres and is comprised of an A-Frame log transfer device area, bulkhead area, debris disposal area, fuel/oil storage and dispensing area, and a maintenance shop area.
- 51. The Winter Harbor LTF Site is located at the former KPC- $^{-16}$ -

operated log transfer facility and camp located at the head of Winter Harbor on the west coast of Prince of Wales Island, approximately twenty miles north of Craig, Alaska. The Site is adjacent to Forest Service Road 5400 and covers approximately eight acres and is comprised of the former log transfer facility and fuel storage areas and the former shop and fuel dispensing areas.

CLAIMS FOR RELIEF

First Claim For Relief: Liability For Response Costs Under Section 107 Of CERCLA

- 52. The allegations appearing in Paragraphs 1 through 33 above are re-alleged and incorporated herein by reference.
- 53. Section 107(a) of CERCLA provides, in pertinent part, that:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this Section --

- the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a

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hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the national contingency plan

42 U.S.C. § 9607(a).

- 54. The term "response" is defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), to mean "remove, removal, remedy, and remedial action; all such terms (including the terms 'removal' and 'remedial action') include enforcement activities related thereto."
- 55. Each of the Coffman Cove, East Twelve Mile, Fire Cove Metal Pit, Francis Cove, Ratz Harbor, and Thorne Bay Landfills Sites is a "facility" within the meaning of Sections 101(9), 106, and 107 of CERCLA, 42 U.S.C. §§ 9601(9), 9606, and 9607.
- 56. Lead, cadmium, arsenic, zinc, copper, PCB's, manganese, and tetrachloroethene are "hazardous substances." One or more of these hazardous substances were disposed of at each of the Coffman Cove, East Twelve Mile, Fire Cove Metal Pit, Francis Cove, Ratz Harbor, and Thorne Bay Landfills Sites within the meaning of Sections 101(14), 106, and 107 of CERCLA, 42 U.S.C. §§ 9601(14), 9606, and 9607.
- 57. At all times relevant to the claims made herein, there were "releases" or "threatened releases" of hazardous substances into the environment at and from the Coffman Cove, East Twelve Mile, Fire Cove Metal Pit, Francis Cove, Ratz Harbor, and Thorne Bay Landfills Sites within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a).
- 58. Plaintiff United States has incurred response costs at the COMPLAINT -18-

Coffman Cove, East Twelve Mile, Fire Cove Metal Pit, Francis Cove, Ratz Harbor, and Thorne Bay Landfills Sites not inconsistent with the National Contingency Plan and anticipates that it will continue to incur response costs at one or more of these Sites.

- 59. Defendant KPC is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- 60. Defendant KPC is within the class of persons liable for response costs at the Coffman Cove, East Twelve Mile, Fire Cove Metal Pit, Ratz Harbor, Thorne Bay Landfills, and Francis Cove Sites under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2) because KPC owned or operated each of those sites at a time when hazardous substances were disposed of at the sites.
- 61. Defendant KPC is liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs, including oversight and enforcement costs, not inconsistent with the National Contingency Plan that have been incurred and will be incurred by the United States in connection with the Coffman Cove, East Twelve Mile, Fire Cove Metal Pit, Francis Cove, Ratz Harbor, and Thorne Bay Landfills Sites.

<u>Second Claim For Relief:</u> <u>Declaratory Judgment Under Section 113(g) of CERCLA</u>

- 62. The allegations appearing in Paragraphs 1 through 33 and 53 through 61 above are re-alleged and incorporated herein by reference.
- 63. This is an action, inter alia, for recovery of response costs referred to in Section 107 of CERCLA, 42 U.S.C. § 9607.
- 64. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the Court is required to enter in this action a

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declaratory judgment on liability of Defendant KPC for response costs that will be binding in any subsequent action(s) to recover further response costs at the Coffman Cove, East Twelve Mile, Fire Cove Metal Pit, Francis Cove, Ratz Harbor, and Thorne Bay Landfills Sites.

Third Claim For Relief: Recovery of Damages Under AS 46.03.822(a)

- 65. The allegations appearing in Paragraphs 1 through 6 and 34 through 51 above are re-alleged and incorporated herein by reference.
 - 66. AS 46.03.822(a) provides in relevant part:
 - Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section, the exception set out in (i) of this section, the exception set out in AS 09.65.240, and the limitation on liability provided under AS 46.03.825, the following persons are strictly liable, jointly and severally, for damages . . . resulting from an unpermitted release of a hazardous substance .
 - (3) any person who at the time of disposal of any hazardous substance owned or operated any facility or vessel at which the hazardous substances were disposed of, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance . . .
- 67. Oil, as that term is defined by AS 46.03.826, is a "hazardous substance" within the meaning of AS 46.03.822(a).
- 68. Each of the East Marble Island, El Capitan, Fire Cove LTF, Hassler Island, Klu Bay, Labouchere Bay, Margaret Bay, Naukati, Polk Inlet, Shelter Cove, Shrimp Bay, Southwest Neets, Suemez Island/Port Refugio, Thorne Bay Logging Camp, Whale Pass, and Winter Harbor LTF Sites is a "facility" within the meaning of AS 46.03.826(3) and

46.03.822(a).

- 69. Each of the sites identified in Paragraphs 35 through 51 above is a "facility" at which "oil" was "disposed of" or from which there was a "release" or a threatened release of "oil" that caused the incurrence of response costs, within the meaning of AS 46.03.900 (with respect to "disposal"), AS 46.03.826 (with respect to "release"), and AS 46.03.822(a).
- 70. KPC is a "person" within the meaning of AS 46.03.900 and AS 46.03.822(a).
- 71. KPC was an "operator" of each of the sites identified in Paragraphs 35 through 51 above at the time of disposal of "oil" at those Sites, within the meaning of AS 46.03.826 and AS 46.03.822(a).
- 72. The disposals or releases of oil at each of the Sites identified in Paragraphs 35 through 51 above were not permitted.
- 73. The United States has incurred "damages" at each of the Sites identified in Paragraphs 35 through 51 above, within the meaning of AS 46.03.824 and AS 46.03.822(a) and (m), for which KPC is strictly liable. Such damages include, without limitation, the costs of investigation and/or cleanup of oil or other hazardous substances incurred by the Forest Service at each of the sites identified in Paragraphs 35 through 51 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America, prays that this Court:

A. Enter judgment against KPC for all costs incurred by the United States, including pre- and post-judgment interest, in connection with response actions related to the Coffman Cove, East Twelve Mile, Fire Cove Metal Pit, Francis Cove, Ratz Harbor, and COMPLAINT -21-

Thorne Bay Landfills Sites;

- B. Enter a declaratory judgment that KPC is liable for any additional response costs incurred by the United States in connection with the Coffman Cove, East Twelve Mile, Fire Cove Metal Pit, Francis Cove, Ratz Harbor, and Thorne Bay Landfills Sites that will be binding in any subsequent action or actions to recover further response costs;
- C. Enter judgment against KPC for damages incurred by the United States at the East Marble Island, El Capitan, Labouchere Bay, Naukati, Polk Inlet, Suemez Island/Port Refugio, Thorne Bay Logging Camp, Whale Pass, Winter Harbor, Fire Cove Log Transfer Facility, Hassler Island, Klu Bay, Margaret Bay, Shelter Cove, Shrimp Bay, and Southwest Neets Sites in an amount equal to the costs the United States has incurred in connection with the investigation and/or cleanup activities at those sites, plus interest; and
- D. Grant such other and further relief as may be just and proper and as the public interest and the equities of the case may require.

Respectfully submitted this ____ of ___ , 2004.

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